

MAR 3 1978-10 40 AM

INTERSTATE COMMERCE COMMISSION
Interstate Commerce Commission
Washington, D. C.

Gentlemen:

9262
RECORDATION NO. Filed & Recorded

MAR 3 1978-10 40 AM

INTERSTATE COMMERCE COMMISSION

RECEIVED
MAR 3 10 39 AM '78
CERTIFICATION UNIT

Enclosed for recordation under the provisions of Section 20c of the Interstate Commerce Act, as amended, are the original and 21 counterparts each of a Conditional Sale Agreement dated as of February 1, 1978 and an Agreement and Assignment dated as of February 1, 1978 relating thereto.

The general description of the railroad equipment covered by the enclosed documents is set forth in Schedules A, B, C and D attached to this letter and made a part hereof.

The names and addresses of the parties are:

Owner-Vendors under Conditional Sale Agreement and Assignors under Agreement and Assignment:	Transportation Products Company 80 East Jackson Boulevard Chicago, Illinois 60604
--	---

Hayden-Murphy Equipment Company
9301 East Bloomington Freeway
Bloomington, Minnesota 55420

Vendee under
Conditional Sale
Agreement:

Burlington Northern Inc.
Burlington Northern Building
176 East Fifth Street
St. Paul, Minnesota 55101

Assignee under
Agreement and
Assignment:

Mercantile-Safe Deposit and
Trust Company
Two Hopkins Plaza
Post Office Box 2258
Baltimore, Maryland 21203

The undersigned is the Vendee named above and has knowledge of the matters set forth in the enclosed documents.

Please return the original and 19 copies of the Conditional Sale Agreement and the Agreement and Assignment to Ronald E. Roden, Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Enclosed is a check in the amount of \$50.00 covering the required recording fee.

8-062A050

MAR 3 1978

Date

Fee \$ 50-

Washington, D. C.

Very truly yours,

BURLINGTON NORTHERN INC.

By

Frank H. Coyne
EXECUTIVE VICE PRESIDENT - FINANCE
AND ADMINISTRATION
VENDEE AS AFORESAID

Enclosures

SCHEDULE A

MANUFACTURER.....	Ohio Locomotive Crane
VENDOR.....	Transportation Products Company
DESCRIPTION OF EQUIPMENT.....	2 25/30 ton loco- motive cranes bearing identifying numbers BN 975317 and BN 975318, respectively
SPECIFICATIONS.....	Per Burlington Northern Purchase Order CA-07876-8 dated February 8, 1978
BASE PRICE.....	\$295,000 per Item (\$590,000 for 2 Items)
DELIVER TO.....	Burlington Northern Inc.
PLACE OF DELIVERY.....	FOB Manufacturer's Plant
ESTIMATED DELIVERY DATES.....	April-May, 1978
OUTSIDE DELIVERY DATE.....	September 1, 1978

SCHEDULE B

MANUFACTURER.....	Ohio Locomotive Crane
VENDOR.....	Transportation Products Company
DESCRIPTION OF EQUIPMENT.....	2 40/50 ton loco- motive cranes bearing bearing identifying numbers BN 975419 and BN 975420, respectively
SPECIFICATIONS.....	Per Burlington Northern Purchaser Order CA-07877-8 dated February 8, 1978
BASE PRICE.....	\$452,000 per Item (\$904,000, for 2 Items)
DELIVER TO.....	Burlington Northern Inc.
PLACE OF DELIVERY.....	FOB Manufacturer's Plant
ETIMATED DELIVERY DATES.....	May, 1978
OUTSIDE DELIVERY DATE.....	September 1, 1978

SCHEDULE C

MANUFACTURER	American Hoist & Derrick Co.
VENDOR.....	Hayden-Murphy Equipment Company
DESCRIPTION OF EQUIPMENT	1 40/50 ton loco- motive crane bearing identifying number BN 972061
SPECIFICATIONS	Per Burlington Northern Purchase Order 81-07879-8 dated February 8, 1978
BASE PRICE	\$312,730 per Item
DELIVER TO	Burlington Northern Inc.
PLACE OF DELIVERY	FOB Manufacturer's Plant
ESTIMATED DELIVERY DATES	March, 1978
OUTSIDE DELIVERY DATE	September 1, 1978

SCHEDULE D

MANUFACTURER	American Hoist & Derrick Co.
VENDOR.....	Hayden-Murphy Equipment Company
DESCRIPTION OF EQUIPMENT	1 30/40 ton locomotive crane bearing identifying number BN 972062
SPECIFICATIONS	Per Burlington Northern Purchase Order 74-07878-8 dated February 8, 1978
BASE PRICE	\$262,305 per Item
DELIVER TO	Burlington Northern Inc.
PLACE OF DELIVERY	FOB Manufacturer's Plant
ESTIMATED DELIVERY DATES	March, 1978
OUTSIDE DELIVERY DATE	September 1, 1978

Interstate Commerce Commission
Washington, D.C. 20423

3/3/78

OFFICE OF THE SECRETARY

Ronald E. Roden
Chapman And Cutler
111 West Monroe Street
Chicago, Illinois 60603

Dear

Sir:

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on at
and assigned recordation number(s) 3/3/78 10:40am

9240 & 9240-A
Sincerely yours,

H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

SE-30-T
(6/77)

RECORDATION NO. 9262 Filed & Recorded

CONDITIONAL SALE AGREEMENT

MAR 3 1978 - 10 40 AM

Dated as of February 1, 1978 INTERSTATE COMMERCE COMMISSION

Among

HAYDEN-MURPHY EQUIPMENT COMPANY

and

TRANSPORTATION PRODUCTS COMPANY

as Vendors

and

BURLINGTON NORTHERN INC.

as Vendee

Re:

\$29,757,000 Principal Amount
8-3/4% Conditional Sale Indebtedness
due 1979-1993

of

BURLINGTON NORTHERN INC.

(Burlington Northern No. 78-1)
(2 25/30 Ton Locomotive Cranes)
(2 40/50 Ton Locomotive Cranes)
(1 40/50 Ton Locomotive Crane)
(1 30/40 Ton Locomotive Crane)

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ATTACHMENTS TO CONDITIONAL SALE AGREEMENT

Schedules A, B, C and D -- Descriptions of Equipment

CONDITIONAL SALE AGREEMENT

CONDITIONAL SALE AGREEMENT dated as of February 1, 1978 among HAYDEN-MURPHY EQUIPMENT COMPANY ("Hayden-Murphy") and TRANSPORTATION PRODUCTS COMPANY ("Transportation Products") (Hayden-Murphy and Transportation Products being hereinafter sometimes collectively referred to as the "Manufacturers" and individually as a "Manufacturer") and BURLINGTON NORTHERN INC. (the "Railroad").

WHEREAS, each Manufacturer is willing to sell and deliver to the Railroad, and the Railroad is willing to purchase, the railroad equipment to be sold by such Manufacturer as described in Schedules A, B, C and D attached hereto (collectively the "Equipment" or "Items" and individually "Item of Equipment" or "Item"); and

WHEREAS, each Manufacturer and the Railroad have agreed that this Agreement shall exclusively and completely state the rights of such Manufacturer and the Railroad with respect to the Equipment and shall supersede all other agreements, oral or written, with respect to the Equipment;

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

SECTION 1. CONSTRUCTION AND SALE.

Each of the Manufacturers will sell and deliver to the Railroad, and the Railroad will purchase from such Manufacturer and accept delivery of and pay for as hereinafter provided, those Items of Equipment which are indicated on Schedules A, B, C and D attached hereto to be sold by such Manufacturer, each Item of which shall be constructed in accordance with the applicable specifications referred to in said Schedules A, B, C and D with such modifications thereof as may be agreed upon in writing by the Railroad and the Manufacturer thereof (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design and quality of equipment and material used in the manufacture of such Items shall conform to all Department of Transportation requirements and specifications for new equipment, and to all standards recommended by the Association of American Railroads, interpreted as being applicable to the new railroad equipment of the character of such Items as of the date of this Agreement.

SECTION 2. DELIVERY.

2.1. Each Manufacturer will deliver the various Items of Equipment to be sold by it to the Railroad in accordance with the delivery schedule set forth in Schedules A, B, C and D attached hereto; provided, however, that the Manufacturers shall have no obligation to deliver any Item of Equipment hereunder subsequent to the filing by or against the Railroad of a petition for reorganization under Section 77 of the Bankruptcy Act.

2.2. Each Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riots or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

2.3. Notwithstanding the foregoing provisions, any Item of Equipment not delivered and accepted on or before the outside delivery date provided therefor in Schedules A, B, C and D hereto, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Manufacturer of such excluded Item of Equipment shall remain obligated to sell and deliver to the Railroad, and the Railroad shall remain obligated to purchase from such Manufacturer, accept delivery of and pay for, any such Item of Equipment thus excluded from this Agreement, and the Railroad and such Manufacturer shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not excluded herefrom, and such Manufacturer and the Railroad shall further execute a separate agreement providing for the sale of such excluded Equipment by such Manufacturer to the Railroad upon the same terms and conditions as those contained herein, modified only to the extent necessary to provide for payment in cash upon delivery of the Equipment, either directly or indirectly by means of a conditional sale agreement, equipment trust or other appropriate method of financing as the Railroad may determine and as may be reasonably satisfactory to such Manufacturer.

2.4. The Equipment during construction shall be subject to inspection by one or more inspectors or other authorized representatives of the Railroad. Upon completion of each Item of Equipment, it shall be presented to such inspectors or representatives for inspection at the place designated herein for delivery of such Item of Equipment, and, if such Item of Equipment conforms to the Specifications applicable thereto, such inspectors or representatives shall execute and deliver to the Manufacturer hereof a certificate or certificates of acceptance (hereinafter called the "Certificate of Acceptance")

stating that such Item of Equipment has been inspected and is accepted by them on behalf of the Railroad and is marked in accordance with Section 5.1 hereof. Any Certificate of Acceptance may cover any number of Items of Equipment.

2.5. The Manufacturer of each Item of Equipment shall bear the risk of loss of each Item of Equipment or damage thereto until delivery to and acceptance by the Railroad. Upon delivery and acceptance by the Railroad of each such Item of Equipment the Railroad shall bear the risk of loss of or damage to such Item.

SECTION 3. PURCHASE PRICE AND PAYMENT.

3.1. The base price per Item of Equipment, including freight charges, if any, to place of delivery, but exclusive of interest and all other charges, is as set forth in Schedules A, B, C and D attached hereto. The base price per Item of Equipment shall be subject to increase or decrease as may be agreed to in writing by the Manufacturer thereof and the Railroad, and the term "Purchase Price" as used herein shall mean the base price as so increased or decreased.

3.2. For the purpose of making settlement for the Equipment, the Equipment shall be divided into not more than six groups of Items of Equipment, or such other number as shall be agreed to by the parties hereto (each such group of Items being hereinafter called a "Group").

3.3. The Railroad hereby acknowledges itself to be indebted to the respective Manufacturers in the amount of, and hereby promises to pay to the respective Manufacturers at such bank or trust company in the United States as each of the Manufacturers or its assignee shall designate for payment to it in funds immediately available at such place of payment, the Purchase Price of the Items of Equipment in each Group (hereinafter sometimes referred to as the "Conditional Sale Indebtedness") in installments as follows:

(a) On September 1, 1978 and on each March 1 and September 1 thereafter to and including September 1, 1993, an installment of interest accrued on the unpaid balance of the Conditional Sale Indebtedness at a rate equal to 8-3/4% per annum; and

(b) On September 1, 1979 and on each September 1 thereafter to and including September 1, 1992, in addition to the installment of interest then payable, an installment equal to one-fifteenth of the original aggregate amount of the Conditional Sale Indebtedness; and

(c) On September 1, 1993, in addition to the installment of interest then payable, an installment equal to the entire principal balance remaining unpaid as of said date.

3.4. The term "Closing Date" with respect to each Group shall mean such date not later than September 1, 1978 which is not more than ten business days following presentation by the Manufacturers of the Items of Equipment included in such Group to the Railroad of the invoice, or invoices, and the Certificate or Certificates of Acceptance with respect to such Group, as shall be fixed by the Railroad by written or telegraphic notice delivered to such Manufacturer or Manufacturers and any assignee thereof at least five business days prior to the Closing Date designated therein.

3.5. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays on which banks in the State of Illinois or Maryland are authorized or required to close. If any date on which a payment is to be made hereunder is not a business day, the amount otherwise payable on such date shall be payable on the next succeeding business day, and no interest on such amount shall accrue for the period from and after the nominal date for payment thereof to such next succeeding business day.

3.6. Interest under this Agreement shall be determined on a basis of a 360-day year of twelve 30-day months.

3.7. The Railroad will pay interest at the rate of 9-3/4% per annum upon all unpaid balances of indebtedness and (to the extent legally enforceable) upon interest, after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

3.8. All payments provided for in this Agreement shall be made by the Railroad in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

3.9. Except as provided in Section 6 hereof, the Railroad shall not have the privilege of prepaying any installment of the indebtedness prior to the date it becomes due hereunder.

SECTION 4. TITLE TO THE EQUIPMENT.

4.1. Each Manufacturer shall and hereby does retain the full security title to and property in the Equipment sold by it until the Railroad shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

4.2. When and only when each Manufacturer shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided and all the Railroad's other obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of such Manufacturer except that each Manufacturer, if requested by the Railroad so to do, will execute a bill or bills of sale of the Equipment releasing its security title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address specified in Section 21 hereof, and will execute in the same manner and deliver at the same place, for filing, registering, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment, and will pay to the Railroad any money paid to such Manufacturer, pursuant to Section 6 hereof and not therefore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale to file such certificate within a reasonable time after written demand by the Railroad.

SECTION 5. MARKING OF EQUIPMENT.

5.1. The Railroad will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedules A, B, C and D hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon both sides of each Item of Equipment in letters not less than one inch in height, the words "Unit Subject to Security Interest of the Agent Bank under Conditional Sale Agreement Recorded with the I.C.C.", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the security title of the Manufacturer thereof to such Items of Equipment, its rights under this Agreement and the rights of any assignee under Section 14 hereof. The Railroad will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced, obliterated or destroyed. The Railroad will not change the road number of any Item of Equipment except with the consent of the Manufacturer

thereof and any assignee pursuant to Section 14 hereof and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been filed, recorded or deposited.

5.2. Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Railroad or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Railroad to use the Equipment under this Agreement.

SECTION 6. CASUALTY OCCURRENCES.

6.1. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or irreparably damaged, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise (each such occurrence, except for any requisition which by its terms is indefinite or does not exceed the original term of this Agreement, being hereinafter called a "Casualty Occurrence"), prior to the payment of the indebtedness in respect of the Purchase Price of such Item, together with interest thereon and all other payments required hereby, the Railroad shall, within ten days after it shall have been determined that such Item of Equipment has suffered a Casualty Occurrence, fully inform the Manufacturers in regard thereto. When the total casualty value of Items of Equipment which have suffered a Casualty Occurrence (exclusive of Items of Equipment having suffered a Casualty Occurrence with respect to which payments shall have been made to the Manufacturers pursuant to this Section 6) shall exceed \$250,000 (or such lesser amount as the Railroad shall elect), the Railroad shall, within 30 days of such event, pay the Manufacturers a sum equal to the aggregate Casualty Payment (as defined in Section 6.3 hereof) of such Items of Equipment as of the date of such payment and shall file with the Manufacturers a certificate of a Vice President or the Comptroller or other Chief Accounting Officer of the Railroad setting forth the Casualty Payment of each Item of Equipment suffering a Casualty Occurrence.

6.2. Any money paid to the Manufacturers pursuant to Section 6.1 hereof shall, so long as no Event of Default shall have occurred and be continuing, be applied, in whole or in part, as the Railroad shall direct in a written instrument filed with the Manufacturers, to prepay indebtedness in respect of the Purchase Price of the Equipment hereunder or to or toward the cost of an Item or Items of Equipment of new standard gauge railroad equipment which shall be of the same character as the Equipment described in Schedules A, B, C, D and E to the Conditional Sale Agreement dated as of February 1, 1978 among the Railroad and FMC Corporation, ACF Industries, Incorporated, PACCAR, Inc

and Difco, Inc. to replace such Item of Equipment having suffered a Casualty Occurrence and which new Item or Items of Equipment shall be of a quality and have a value and utility at least equal to such Item of Equipment having suffered a Casualty Occurrence, as the Railroad shall direct in such written instrument. In case any such money shall be applied to prepay indebtedness, it shall be so applied, on the first installment date for the payment of the Purchase Price of the Equipment next following receipt by the Manufacturers of such written direction, to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the installments of the Purchase Price of the Equipment thereafter falling due whether or not such amount shall be sufficient to prepay the entire amount of the Purchase Price. In case of replacement the amount to be paid by the Manufacturers in respect of any replacing Item shall not exceed the lesser of the cost of such Item or the amount which such Item would have cost if acquired on the earliest date when any of such money was paid to the Manufacturers, and the Railroad shall pay any additional cost of such Item. Under no circumstance shall Manufacturers be required under this Section 6.2 to make prepayments or to pay for replacements except out of funds paid to Manufacturers pursuant to Section 6.1 hereof. In the case of any replacement, the Purchase Price of such replacing Item shall for the purpose of this Agreement be the amount of money advanced by the Manufacturers in the payment therefor, but shall not include any portion of the cost thereof paid by the Railroad. The amount which any such replacing Item would have cost if acquired on the earliest date when any of such money was paid to the Manufacturers shall be conclusively determined by the certificate of a Vice-President or the Comptroller or other Chief Accounting Officer of the Railroad to be filed as hereinafter provided.

6.3. The payment to be made to the Manufacturers in respect of each Item of Equipment having suffered a Casualty Occurrence (the "Casualty Payment") shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Payment shall be determined, plus interest accrued thereon but unpaid as of such date.

6.4. So long as no Event of Default shall have occurred and be continuing, any money paid to the Manufacturers pursuant to this Section 6 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in (i) such direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest or (ii) commercial paper or finance company paper rated "A-1" or "P-1" or their equivalent by Standard & Poors Corporation or Moody's Investors Services, Inc. or (iii) obligations issued or guaranteed by any state of the United States or the District of Columbia or any political

subdivision of any such state or district rated "AA" or better by a national rating service, or (iv) repurchase agreements fully secured by any one or more of the obligations referred to in clause (i) above, or (v) in certificates of deposit issued by or bankers' acceptances drawn on and accepted by commercial banks in the United States of America which are members of the federal reserve system having capital and surplus aggregating at least \$100,000,000, in each case maturing in not more than one year from the date of such investment (all such investments being hereinafter called "Investments"), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest or earned discount received by the Manufacturers on any Investments shall be held by the Manufacturers and applied as herein provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Manufacturers thereon, up to the cost (including accrued interest or earned discount) thereof, shall be held by the Manufacturers for application pursuant to this Section 6, and any excess shall be paid to the Railroad. If such proceeds (plus such interest or earned discount) shall be less than such cost, the Railroad will promptly pay to the Manufacturers an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Manufacturers in connection with the purchase and sale of Investments.

6.5. The Railroad will cause any replacing Item to be plated or marked as provided in Section 5.1 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Manufacturers subject to the provisions hereof, and the Railroad shall promptly execute, acknowledge, deliver, file and record all such documents (including the filing with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and the deposit with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and publication of notice of such deposit in The Canada Gazette in accordance with said Section 86 of an appropriate supplemental agreement describing such replacements) and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Manufacturers to such replacements. All such replacements shall be warranted in like manner as the Items replaced, and the vendor of the replacements shall, if other than the Manufacturers, duly consent to the subjection thereof to this Agreement and agree to be bound by all the terms and provisions contained herein in respect of such replacements in the like manner as the Manufacturers are in respect of the original Equipment delivered hereunder.

6.6. Whenever the Railroad shall file with the Manufacturers, pursuant to the foregoing provisions for this Section 6, a written direction to apply money toward the cost of a replacement Item of new standard gauge railroad equipment, the Railroad shall file therewith in such number of counterparts as may reasonably be requested:

(a) a certificate of a Vice-President or the Comptroller or other Chief Accounting Officer of the Railroad certifying that such replacing Item is new standard gauge railroad equipment (other than work or passenger equipment) and has been plated or marked as required by the provisions of this Section 6 and certifying the cost of such replacing Item or Items, the amount which such replacing Item would have cost if acquired on the earliest date when any such money was paid to the Manufacturers and that the cost thereof does not exceed the fair value of such Item and that such replacing Item or Items have a quality and value and utility at least equal to the Item or Items replaced; and

(b) an opinion of counsel for the Railroad that title to each replacing Item is vested in the Manufacturers free and clear of all liens and encumbrances, and that such Item has come under and become subject to this Agreement.

6.7. In the event that any moneys paid to, or held by, the Manufacturers pursuant to this Section 6 are applied to the prepayment of indebtedness in respect of the Purchase Price, the Railroad will pay to the Manufacturers on the date of such application interest then accrued and unpaid on the indebtedness so prepaid. If an Event of Default shall have occurred and be continuing, then so long as such Event of Default shall continue all money then held by the Manufacturers pursuant to this Section 6 shall be applied by the Manufacturers as if such money were money received upon the sale of Equipment pursuant to Section 16 hereof.

6.8. In order to facilitate the sale, or other disposition of any Equipment suffering a Casualty Occurrence, the Manufacturers shall upon request of the Railroad, after deposit by the Railroad of a sum equal to the Casualty Payment of such Equipment, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Conditional Sale Agreement, in such form as may be reasonably requested by the Railroad.

6.9. In the event that prior to the expiration of the term of this Agreement, the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period

or for a stated period ending on or before said date, the Railroad's duty to pay the indebtedness in respect of the Purchase Price thereof shall continue for the duration of such requisitioning or taking. The Railroad shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

SECTION 7. TAXES.

All payments to be made by the Railroad hereunder will be free of expense to the Manufacturers for collection or other charges and will be free of expense to the Manufacturers in respect of the amount of any local, state or Federal taxes, license and registration fees, assessments, charges, fines, penalties, sales, use and property taxes, gross receipts taxes arising out of receipts from use or operation of the Equipment, and other taxes, fees and governmental charges similar or dissimilar to the foregoing (other than net income, excess profits and similar taxes) hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay on demand in addition to the indebtedness in respect of the Purchase Price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment or for the use or operation thereof by the Railroad or upon the earnings arising therefrom or upon the Manufacturers solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Manufacturers or result in a lien upon any Item of Equipment; provided, however, that the Railroad shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, licenses, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Manufacturers, adversely affect the property or rights of the Manufacturers hereunder. If any such expenses, taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Manufacturers directly and paid by the Manufacturers, the Railroad shall reimburse the Manufacturers on presentation of an invoice therefor; provided, however, that the Railroad shall not be obligated to reimburse the Manufacturers for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Manufacturers shall have submitted notice in writing to the Railroad at least five business days in advance of payment thereof.

SECTION 8. REPORTS AND INSPECTIONS.

8.1. On or before April 1 in each year, commencing with the year 1979, the Railroad will furnish to the Manufacturers an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Items of Equipment then subject to this Agreement, the amount, description

and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Manufacturers may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 5.1 hereof shall have been preserved or replaced.

8.2. The Manufacturers shall have the right, at their sole cost and expense by their authorized representative, to inspect the Equipment and the Railroad's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Manufacturers the existence and proper maintenance thereof during the continuance of this Agreement.

SECTION 9. POSSESSION, USE AND MAINTENANCE.

9.1. The Railroad, so long as it shall not be in default under this Agreement, shall be entitled, from and after the delivery of the Equipment by the Manufacturers to the Railroad, to the possession of the Equipment and the use thereof upon the railroad lines owned or operated by it either alone or jointly with another and whether under lease or otherwise, or upon the railroad lines owned or operated by any railroad company controlled by or controlling the Railroad, or over which it has trackage rights, and the Equipment may also be used upon connecting and other railroads in the usual interchange of traffic, from and after delivery of the Equipment by the Manufacturers to the Railroad; provided however that such use shall be subject to all the terms and conditions of this Agreement and that the Railroad shall not assign or permit the assignment of any Item of Equipment to service involving the regular operation and maintenance thereof outside the continental United States.

9.2. The Railroad shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Railroad shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. The Railroad shall not modify any Item of Equipment without the written authority and approval of the Manufacturers which approval shall not be unreasonably withheld, provided that no such approval shall be necessary if and to the extent such modification is required by Section 11 hereof. Any parts (except communications, signal and automatic control equipment and devices having a similar use which are added to any Item of Equipment by the Railroad, the cost of which is not included in the Purchase Price of such Item and which are not required for the operation or use of such Item by the Interstate Commerce Commission, the Department of Transportation or any other regulatory body) installed or replacements made by the Railroad upon any Item of Equipment shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Manufacturers, without cost or expense to the Manufacturers.

SECTION 10. PROHIBITION AGAINST LIENS.

10.1. The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon any Item of Equipment equal or superior to the security title of the Manufacturers, and any liens, encumbrances or charges which might be levied against or imposed upon any Item of Equipment as a result of the failure of the Railroad to perform or observe any of its covenants or agreements under this Agreement, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested by the Railroad in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Manufacturers, adversely affect the property or rights of the Manufacturers hereunder.

10.2. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other liens arising in the ordinary course of business and, in each case, not delinquent (such liens being herein called "permitted liens").

SECTION 11. RULES, LAWS AND REGULATIONS.

During the term of this Agreement the Railroad will comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the alteration of the Equipment, the Railroad will conform therewith at its expense, and will maintain the same in proper condition for operation under such laws and rules; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Manufacturers, adversely affect the property or rights of the Manufacturers hereunder.

SECTION 12. INDEMNITIES.

12.1. The Railroad agrees to indemnify, protect and hold harmless the Manufacturers against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including claims for strict liability in tort and counsel fees, arising out of retention by the Manufacturers of security title

arising out of retention by the Manufacturers of security title to the Equipment, or out of the use and operation thereof during the period when security title thereto remains in the Manufacturers. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of the Equipment and the conveyance of the

12.2. The Railroad, after delivery to and acceptance by the Railroad pursuant to Section 2.5 hereof, will bear risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Item or of all of the Equipment.

12.3. Each Manufacturer hereby assigns to the Railroad and its respective successors and assigns, each and all of its rights against the manufacturer of each Item of Equipment to be sold by it insofar as such rights arise out of any or all warranties, express or implied, with respect to such Item of Equipment, and such Manufacturer hereby appoints and constitutes the Railroad its agent and attorney-in-fact during the term of this Agreement, so long as the Railroad is not in default hereunder, to assert and enforce, from time to time in the name and for the account of such Manufacturer and the Railroad, as their interests may appear, in all cases at the sole cost and expense of the Railroad, whatever claims and rights such Manufacturer may have against said manufacturer thereof upon said warranties; it being understood, however, that said assignment and appointment are not exclusive, that the Railroad shall not have the sole right to assert and enforce such claims and rights in respect of such warranties and that such Manufacturer has concurrently with such assignment and appointment, similarly assigned such claims and rights to the assignee of its right, title and interest under this Agreement and appointed such assignee its agent and attorney-in-fact to assert and enforce such claims and rights for its benefit as well. THE ASSIGNMENT PROVIDED FOR IN THIS SECTION 12.3 IS EXPRESSLY IN LIEU OF, AND EACH MANUFACTURER HEREBY EXPRESSLY DISCLAIMS ANY LIABILITY UNDER, AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF SUCH MANUFACTURER, EXCEPT FOR ITS OBLIGATIONS HEREUNDER AS LIMITED HEREBY, AND SUCH MANUFACTURER DOES NOT ASSUME OR AUTHORIZE ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE DELIVERY OF THE EQUIPMENT. IN NO EVENT SHALL ANY MANUFACTURER BE LIABLE FOR DAMAGES, INCLUDING, WITHOUT LIMITATION, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR COMMERCIAL LOSS.

SECTION 13. ASSIGNMENT OF PATENT INDEMNITIES.

Each Manufacturer hereby assigns to the Railroad and its respective successors and assigns, each and all of its rights against the manufacturer of each Item of Equipment to be sold by it insofar as such rights arise out of any or all

indemnities with respect to such Items of Equipment for violations of patents or similar rights, and such Manufacturer hereby appoints and constitutes the Railroad its agent and attorney-in-fact during the term of this Agreement so long as the Railroad is not in default hereunder, to assert and enforce long as the Railroad is not in default hereunder, to assert and enforce, from time to time in the name and for the account of such Manufacturer and the Railroad, as their interests may appear, in all cases at the sole cost and expense of the Railroad, whatever claims and rights such Manufacturer may have against said manufacturer thereof upon said indemnities; it being understood, however, that said assignment and appointment are not exclusive, that the Railroad shall not have the sole right to assert and enforce such claims and rights in respect of such indemnities and that such Manufacturer has concurrently with such assignment and appointment, similarly assigned such claims and rights to the assignee of its right, title and interest under this Agreement and appointed such assignee its agent and attorney-in-fact to assert and enforce such claims and rights for its benefit as well.

SECTION 14. ASSIGNMENTS.

14.1. Except as otherwise provided in Section 9.1 hereof, the Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or transfer the right to possession of any Item of Equipment without first obtaining the written consent of the Manufacturers. An assignment or transfer to a railroad company or other purchaser which shall acquire all or substantially all the railroad lines of the Railroad, and which by execution of an appropriate instrument satisfactory to the Manufacturers shall assume and agree to perform each and all of the obligations and covenants of the Railroad hereunder, shall not be deemed a breach of this covenant.

14.2. All or any of the rights, benefits and advantages of the Manufacturers under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Manufacturers and reassigned by an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturers from, any of the obligations of the Manufacturers to sell and deliver the Equipment in accordance with Sections 1 and 2.1 hereof or relieve the Railroad of its obligations to the Manufacturers hereunder.

14.3. Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the Manufacturer's right, security title and interest in and to the Equipment subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad, of the notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

14.4. The Railroad hereby acknowledges that, con-
currently with the execution and delivery of this Agreement and
in accordance with the custom of railroad equipment manufacturers,
the Railroad has made arrangements for and the Manufacturers are
executing and delivering an Agreement and Assignment dated as
of February 1, 1978 (the "Agreement and Assignment") between the
Manufacturers and Mercantile-Safe Deposit and Trust Company, as
agent and assignee (the "Agent"), pursuant to which the Manu-
facturers are assigning certain of their respective rights and
interests hereunder. The Railroad expressly acknowledges and
agrees with the Agent and its successors and assigns, for the
purpose of inducing the execution and delivery of the Agreement
and Assignment by the Agent and its advance to the Manufacturers
in consideration therefor of an amount equal to the Purchase Price
of the Equipment, that the rights of the Agent and its successors
and assigns to the entire unpaid indebtedness in respect of the
Purchase Price of the Equipment or any part thereof as so assigned,
together with interest thereon, as well as all other rights here-
under so assigned, shall not be subject to any defense, setoff,
counterclaim or recoupment whatsoever, whether by reason of any
breach of any obligation of any Manufacturer with respect to
the Equipment or the delivery or warranty thereof or with respect
to any indemnity herein contained or any interruption from
whatsoever cause in the use, operation or possession of the Equip-
ment or any part thereof, or by reason of any other indebtedness
or liability, howsoever and whenever arising, at any time owing
to the Railroad by any Manufacturer or to any other person, firm
or corporation or to any governmental authority, or for any cause
whatsoever, it being the intent hereof that, except in the case
of a wrongful act on the part of the Agent or its successors
and assigns, the Railroad shall be unconditionally and absolutely
obligated to pay the Agent the entire unpaid indebtedness in
respect or the Purchase Price of the Equipment as so assigned,
together with interest thereon, all in the manner and upon the
dates set forth in Section 3 hereof. Any and all such obligations,
if any and howsoever arising, shall be and remain enforceable
by the Railroad against and only against the Manufacturers.

14.5. In the event of any such assignment or successive
assignment by the Manufacturers of security title to the Equipment
and of the Manufacturers rights hereunder with respect thereto,
the Railroad will, whenever requested by such assignee, change
the names and word or words to be marked on each side of each
Item of Equipment so as to indicate the security title of such
assignee to the Equipment with such names and word or words as
shall be specified by such assignee, subject to the requirements
of the laws of the jurisdictions in which the Equipment shall
be operated relating to such names and word or words for use
on equipment covered by conditional sale agreements with respect
to railroad equipment. The cost of marking such names and word
or words with respect to the Agent (or to any successor assignee
of the Agent) shall be borne by the Railroad. The cost of marking
such names and word or words in connection with any subsequent

assignment (other than to a successor agent or trustee of the Agent) will be borne by the subsequent assignee.

14.6. In the event of any such assignment prior to the completion of delivery of the Equipment, the Railroad will, in connection with settlement for the Group subsequent to such assignment, deliver to the assignee, at the time of delivery by the Railroad of notice fixing the Closing Date with respect to the Group, all documents reasonably required by the terms of such assignment to be delivered by the Railroad to the assignee in connection with such settlement, in such number or counterparts as may reasonably be requested.

14.7. If this Agreement shall have been assigned by any of the Manufacturers or all of the Manufacturers (hereafter severally called the "Assigning Manufacturer"), and the assignee shall not, whether by reason of an insufficiency of funds or otherwise, make payment to the Assigning Manufacturer on the Closing Date with respect to any Item of Equipment manufactured by such Assigning Manufacturer and designated for settlement on such Closing Date of an amount equal to that portion of the Purchase Price of such Item of Equipment as provided in the instrument of assignment, such Assigning Manufacturer will promptly notify the Railroad of such event, such Item of Equipment shall be excluded from settlement on such Closing Date but fully preserving such Assigning Manufacturer's security title to such Item in a manner acceptable to such Assigning Manufacturer and the Railroad shall not later than 60 days after such Closing Date pay or cause to be paid to such Assigning Manufacturer the Purchase Price of all such Items of Equipment, or the portion thereof unpaid by the assignee, such payment to be in cash or if such Assigning Manufacturer and the Railroad shall mutually agree, by means of a conditional sale agreement, equipment trust or other appropriate method of financing as the railroad shall determine and as may be reasonably satisfactory to such Assigning Manufacturer.

SECTION 15. APPLICATION OF PROVISIONS OF SECTION 16, "DEFAULTS", AND SECTION 17, "REMEDIES".

It is contemplated that each Manufacturer will, coincidentally with the execution and delivery of this Agreement, assign certain of its rights under this Agreement, and all its respective right, security title and interest in and to the Equipment to the Agent. It is desired by the parties hereto that the Agent should upon such assignment be entitled to enforce any remedies in case of default by the Railroad in respect of its obligations under this Agreement with any of the Manufacturers as if such breach were a default in respect of the Railroad's obligations under this Agreement with each of the Manufacturers. Accordingly, on the assumption that such assignments to the Agent will be made by each Manufacturer, the defaults and the remedies therefor as set forth in Sections 16 and 17 hereof are set forth as if there were but a single Manufacturer.

SECTION 16. DEFAULTS.

16.1. In the event that any one or more of the following events of default ("Events of Default") shall occur and be continuing, to-wit:

(a) The Railroad shall fail to pay in full any sum payable by the Railroad when payment thereof shall be due under Section 3 or 6 hereof and such default shall continue for ten days; or

(b) The Railroad shall fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Manufacturer for such compliance for more than 30 days after written notice from the Manufacturer specifying the default and demanding the same to be remedied; or

(c) Any representation or warranty made by the Railroad herein or in any statement or certificate furnished to the Manufacturer or any assignee of the Manufacturer pursuant to or in connection with this Agreement, the Agreement and Assignment or the Finance Agreement dated as of February 1, 1978 relating hereto between the Railroad, the Agent and various institutional investors proves untrue in any material respect as of the date of issuance or making thereof; or

(d) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and (unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees within 31 days after such appointment or 60 days after such petition shall have been filed, whichever shall be earlier; or

(e) Any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and (unless such proceedings shall have been dismissed, nullified, stayed

or otherwise rendered ineffective but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Railroad or for the property of the Railroad in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) The Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any Item of Equipment;

then at any time after the occurrence and during the continuance of such an Event of Default the Manufacturer may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, declare the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of 9-3/4% per annum, to the extent legally enforceable, and the Manufacturer shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

16.2. The Manufacturer may waive any such Event of Default and its consequences and rescind and annul any such declaration by notice to the Railroad in writing to that effect. Upon any such waiver the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

SECTION 17. REMEDIES.

17.1. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Manufacturer may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law

then in force and applicable to the action to be taken by the Manufacturer, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any Item thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 17 expressly provided, and may remove the same from possession and use of the Railroad or where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad, with or without process of law.

17.2. In case the Manufacturer shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Railroad for the delivery of the Equipment to the Manufacturer, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be reasonably designated by the Manufacturer and shall there deliver the Equipment or cause it to be delivered to the Manufacturer; and, at the option of the Manufacturer, the Manufacturer may keep the Equipment on any of the railroad lines or premises of the Railroad until the Manufacturer shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Manufacturer reasonably convenient. The agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Manufacturer and its agent or agents for damages of whatever nature in connection with any retaking of any Item of Equipment in any reasonable manner.

17.3. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Section 16.2 hereof), the Manufacturer (after retaking possession of the Equipment as hereinbefore in this Section 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire unpaid indebtedness in respect of the Purchase Price thereof, together with interest thereon and all other payments due hereunder and make such disposition thereof as the manufacturer shall deem fit. Written notice of the Manufacturer's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Section 21 hereof, and to any other persons to whom the law may require notice, within 30 days after the indebtedness in respect of the Purchase Price of the Equipment shall have been declared

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immediately due and payable by the Manufacturer as above provided. In the event that the Manufacturer should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all of the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Manufacturer as compensation for the use of the Equipment; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Manufacturer the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this Section 17.3 object in writing to the Manufacturer within 30 days from the receipt of notice of the Manufacturer's election to retain the Equipment, then the Manufacturer may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold the Equipment pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Manufacturer shall not have given notice to retain, as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Section 17.

17.4. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Manufacturer may determine, provided that the Railroad shall be given written notice of such sale not less than 30 days prior thereto, by mail addressed as provided herein. If such sale shall be a private sale, it shall be subject to the rights of the Railroad to purchase or provide a purchaser, within 30 days after notice of the proposed sale price, at the same price offered in writing by the intending purchaser or a better price. In the event that the Railroad does not exercise said right to purchase or provide a purchaser for the Equipment, the Manufacturer may bid for and become the purchaser of the Equipment, or any Item thereof, so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in this Section 17), and in payment of the Purchase Price therefor the Manufacturer shall be entitled to have credited on account thereof all sums due to the Manufacturer from the Railroad hereunder.

17.5. Each and every power and remedy hereby specifically given to the Manufacturer shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Manufacturer. All such

powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Manufacturer in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

17.6. All sums of money realized by the Manufacturer under the remedies herein provided shall be applied, first to the payment of the expenses and liabilities of the Manufacturer herein undertaken to be paid, second to the payment of interest on the indebtedness in respect of the Purchase Price of the Equipment and third to the payment, ratably in accordance with the unpaid balance of each installment, of the installments of indebtedness in respect of the Purchase Price of the Equipment accrued and unpaid. If, after applying as aforesaid all sums of money realized by the Manufacturer, there shall remain any amount due to it under the provisions of this Agreement, the Manufacturer may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Manufacturer, there shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid to the Railroad.

17.7. The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Manufacturer in enforcing its remedies under the terms of this Agreement. In the event that the Manufacturer shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

17.8. The foregoing provisions of this Section are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

SECTION 18. APPLICABLE STATE LAWS.

18.1. Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale agreement and enforced as such.

18.2. Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of any intention to take possession of or to sell the Equipment, or any Item thereof, and any other requirements as to the time, place and terms of sale thereof, and other

requirements with respect to the enforcement of the Manufacturers' rights hereunder and any and all rights of redemption.

SECTION 19. EXTENSION NOT A WAIVER.

No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Manufacturers shall impair or affect the Manufacturers' right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted, to the Railroad shall not otherwise alter or affect the Manufacturers' rights or the obligations of the Railroad hereunder. The Manufacturers' acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Manufacturers' rights hereunder with respect to any subsequent payments or defaults therein.

SECTION 20. RECORDING.

The Railroad will cause this Agreement, any assignment hereof and any supplements hereto and thereto to be filed, recorded or deposited and refiled, re-recorded or redeposited, if necessary, with the Interstate Commerce Commission and the Registrar General of Canada (with notice of such deposit to be published in The Canada Gazette in accordance with Section 86 of the Railway Act of Canada), and otherwise as may be required by law or reasonably requested by the Manufacturers for the purpose of proper protection, to the satisfaction of counsel for the Manufacturers of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Manufacturers certificates or other evidences of such filing, recording or depositing, and an opinion of counsel for the Railroad with respect thereto, satisfactory to the Manufacturers.

SECTION 21. NOTICE.

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

(a) to the Railroad: Burlington Northern Inc.,
Burlington Northern Building, 176 East Fifth Street, St.
Paul, Minnesota 55101, Attention: Assistant Vice
President - Financial Planning,

(b) to Hayden-Murphy: Hayden-Murphy Equipment
Company, 9301 East Bloomington Freeway, Bloomington,
Minnesota 55420, Attention: _____,

(c) to Transportation Products: Transportation Products Company, 80 East Jackson Boulevard, Chicago, Illinois 60604, Attention: John D. Miller, President,

(d) to the Agent: Mercantile-Safe Deposit and Trust Company, P.O. Box 2258, Two Hopkins Plaza, Baltimore, Maryland 21203, Attention: Corporate Trust Department, or to any other assignee of the Manufacturers, or of the Railroad, at such address as may have been furnished in writing to the Railroad or the Manufacturers, as the case may be, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

SECTION 22. HEADINGS.

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

SECTION 23. EFFECT AND MODIFICATION OF AGREEMENTS.

This Agreement and the Schedules relating hereto, exclusively and completely state the rights and agreements of the Manufacturers and the Railroad with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Manufacturers and the Railroad.

SECTION 24. LAW GOVERNING.

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

SECTION 25. DEFINITIONS.

The term "Manufacturers", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, Hayden Murphy and Transportation Products and any successor or successors for the time being to the properties and business of each, respectively, and, after any such assignment, any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights

hereunder that are retained and excluded from any assignment. The rights and undertakings of each Manufacturer hereunder are several and not joing.

SECTION 26. PAYMENT OF EXPENSES.

The Railroad will pay all stamp or other taxes, if any, incident to, and the reasonable cost and expense of, the printing or other duplicating, execution, acknowledgment, delivery, filing or recording of this Agreement or the Agreement and Assignment, or of any instrument supplemental to or amendatory of this Agreement or the Agreement and Assignment, and of any certificate of the payment in full of the indebtedness in respect of the Purchase Price due hereunder.

SECTION 27. CONSOLIDATION OR MERGER.

In case of any consolidation or merger to which the Railroad or any Manufacturer shall be a party, or in case of any sale of all or substantially all the assets of the Railroad or any Manufacturer, the corporation resulting from such consolidation or merger (if other than the Railroad or such Manufacturer) or the corporation which shall acquire such assets, shall expressly assume all obligations hereunder not then performed by the Railroad or such Manufacturer, as the case may be, and shall become entitled to all rights hereunder of the Railroad or such Manufacturer, as the case may be.

SECTION 28. EXECUTION.

This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be signed by all of the parties hereto so long as at least one counterpart is signed by each party hereto. Although this Agreement is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their officers or representatives, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

(Corporate Seal)

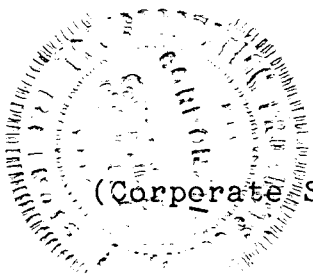
HAYDEN-MURPHY EQUIPMENT COMPANY

Attest:

By

Its

Secretary



(Corporate Seal)

TRANSPORTATION PRODUCTS COMPANY

Attest:

Walter Thomas
Secretary

By John D. Miller
Its President

(Corporate Seal)

BURLINGTON NORTHERN INC.

Attest:

G. F. Steinhilber
ASST. Secretary

By Frank H. Cooper
Executive Vice President-
Finance and Administration

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

On this 1st day of March, 1978, before me personally appeared Robert Miller, to me personally known, who, being by me duly sworn, says that he is a President of TRANSPORTATION PRODUCTS COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal)

Bernice Hagman
Notary Public

My Commission Expires: Oct. 24, 1978

STATE OF MINNESOTA)
)
COUNTY OF Ramsey) SS

On this 2 day of March, 1978, before me personally appeared Frank Schubert, to me personally known, who, being by me duly sworn, says that he is a V.P. of HAYDEN-MURPHY EQUIPMENT COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal)

John L. Hill
NOTARY PUBLIC
MINNESOTA
My Commission Expires Mar. 15, 1981

My Commission Expires:

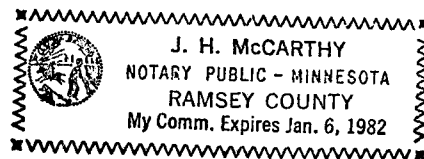
STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

On this 2nd day of March, 1978,
before me personally appeared Frank H. Coyne, to me personally
known, who being by me duly sworn, says that he is the
Executive Vice President-Finance and Administration of
BURLINGTON NORTHERN INC., that one of the seals affixed to the
foregoing instrument is the corporate seal of said corporation,
that said instrument was signed and sealed on behalf of said
corporation by authority of its Board of Directors, and he
acknowledged that the execution of the foregoing instrument was
the free act and deed of said corporation.

J. H. McCarthy
Notary Public

(SEAL)

My Commission Expires:



SCHEDULE A

(to Conditional Sale Agreement)

MANUFACTURER.....	Ohio Locomotive Crane
VENDOR.....	Transportation Products Company
DESCRIPTION OF EQUIPMENT.....	2 25/30 ton loco- motive cranes bearing identifying numbers BN 975317 and BN 975318, respectively
SPECIFICATIONS.....	Per Burlington Northern Purchase Order CA-07876-8 dated February 8, 1978
BASE PRICE.....	\$295,000 per Item (\$590,000 for 2 Items)
DELIVER TO.....	Burlington Northern Inc.
PLACE OF DELIVERY.....	FOB Manufacturer's Plant
ESTIMATED DELIVERY DATES.....	April-May, 1978
OUTSIDE DELIVERY DATE.....	September 1, 1978

SCHEDULE B

(to Conditional Sale Agreement)

MANUFACTURER.....	Ohio Locomotive Crane
VENDOR.....	Transportation Products Company
DESCRIPTION OF EQUIPMENT.....	2 40/50 ton loco- motive cranes bearing bearing identifying numbers BN 975419 and BN 975420, respectively
SPECIFICATIONS.....	Per Burlington Northern Purchaser Order CA-07877-8 dated February 8, 1978
BASE PRICE.....	\$452,000 per Item (\$904,000, for 2 Items)
DELIVER TO.....	Burlington Northern Inc.
PLACE OF DELIVERY.....	FOB Manufacturer's Plant
ETIMATED DELIVERY DATES.....	May, 1978
OUTSIDE DELIVERY DATE.....	September 1, 1978

SCHEDULE C

(to Conditional Sale Agreement)

MANUFACTURER	American Hoist & Derrick Co.
VENDOR.....	Hayden-Murphy Equipment Company
DESCRIPTION OF EQUIPMENT	1 40/50 ton loco- motive crane bearing identifying number BN 972061
SPECIFICATIONS	Per Burlington Northern Purchase Order 81-07879-8 dated February 8, 1978
BASE PRICE	\$312,730 per Item
DELIVER TO	Burlington Northern Inc.
PLACE OF DELIVERY	FOB Manufacturer's Plant
ESTIMATED DELIVERY DATES	March, 1978
OUTSIDE DELIVERY DATE	September 1, 1978

SCHEDULE D

(to Conditional Sale Agreement)

MANUFACTURER	American Hoist & Derrick Co.
VENDOR.....	Hayden-Murphy Equipment Company
DESCRIPTION OF EQUIPMENT	1 30/40 ton locomotive crane bearing identifying number BN 972062
SPECIFICATIONS	Per Burlington Northern Purchase Order 74-07878-8 dated February 8, 1978
BASE PRICE	\$262,305 per Item .
DELIVER TO	Burlington Northern Inc.
PLACE OF DELIVERY	FOB Manufacturer's Plant
ESTIMATED DELIVERY DATES	March, 1978
OUTSIDE DELIVERY DATE	September 1, 1978